

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Pasadena Avenue Monterey Road Committee for variance of General Order 143B and authority to explore and enter into negotiations for consideration and implementation pursuant to Public Utilities Code (PUC) §§ 1202, 7604 as a pilot project as permitted by SB 1491.

Application 03-01-013
(Filed January 16, 2003)

Application of the Pasadena Avenue Monterey Road Committee and City of South Pasadena for Variance of General Order 75-C.

Application 03-07-049
(Filed July 25, 2003)

In the Matter of the Application of the City of South Pasadena for Approval of Ordinance 2121 Relating to Limitations of Train Speeds Pursuant to Section 7658 of the California Public Utilities Code.

Application 03-07-050
(Filed July 25, 2003)

**ADMINISTRATIVE LAW JUDGE'S REVISED SCOPING MEMO
AND RULING OF ASSIGNED COMMISSIONER**

Summary

Pursuant to Rule 6(a)(3) of the Commission's Rules of Practice and Procedure¹, this ruling consolidates these three proceedings, revises the schedule

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

previously set in Application (A.) 03-01-013, assigns a presiding officer, and addresses the scope of the proceeding, following a scheduling conference held by telephone on September 22, 2003.

Background

These applications are among a series of applications related to the construction of the Los Angeles to Pasadena Blue Line light rail system.² Unlike the other applications, which were filed by the Los Angeles to Pasadena Metro Blue Line Construction Authority (Construction Authority) for permission to construct a number of crossings for the light rail system, these applications were filed by a community group in South Pasadena, Pasadena Avenue Monterey Road Committee (PAMRC), and the City of South Pasadena (City) (collectively, PAMRC). A.03-01-013 requests that variances from some of the requirements of General Order (GO) 143-B be granted to eliminate the sounding of horns or other audible warning devices by Gold Line trains in South Pasadena. A.03-07-049 requests a variance from GO 75-C to limit or eliminate the sounding of bells on the crossing gates at all eight South Pasadena at-grade crossings of the Gold Line. A.03-07-050 requests, pursuant to Section 7658, that the Commission approve the City's Ordinance 2121, which, among other things, would impose a speed limit of 20 miles per hour on Gold Line trains in South Pasadena.

The Los Angeles County Metropolitan Transportation Authority (LACMTA), the operator of the Gold Line, filed a protest to A.03-01-013 on February 20, 2003. The Construction Authority filed a response to A.03-01-013

² Since the initial applications were filed, the line has been renamed the Gold Line. That name will be used here.

on February 20, 2003. LACMTA protested both A.03-07-049 and A.03-07-050 on September 5, 2003.

Scope of the Proceeding

The three applications all seek to place constraints on the operation of the Gold Line in South Pasadena, with the principal objective of reducing noise impacts on City residents from Gold Line operations. Although they invoke different procedures – A.03-01-013 and A.03-07-049 seek variances from GOs; A.03-07-050 seeks Commission approval of a local ordinance – together, they present a package of conditions that PAMRC contends would improve Gold Line operations for City residents. Because noise is a factor in all three applications, much of the evidence related to one application will relate to the others. It therefore will be a more efficient use of the resources of the Commission and the parties and will yield a more useful record if the three applications are consolidated for evidentiary hearing (EH).

The scope of A.03-01-013, standing alone, has been developed through the Scoping Memo and Ruling of Assigned Commissioner, dated April 28, 2003 (Scoping Memo), and the Administrative Law Judge's (ALJ) Ruling on Preliminary Legal Issues, Requiring Prehearing Conference Statements, and Allowing Late Filing of Reply Brief, dated June 30, 2003 (Legal Issues Ruling). The Scoping Memo set a preliminary schedule that included an EH, but deferred determination of the need for an EH until after the parties had submitted briefs on preliminary legal issues. The Legal Issues Ruling limited the proceeding to PAMRC's request for a variance from GO 143-B, seeking to establish a "no-horn zone" for Gold Line trains in South Pasadena (of which PAMRC's request for a 20 miles per hour speed limit was a subsidiary part), which would be the subject of an EH.

Action taken by the Commission has limited the scope of A.03-07-049. In Resolution SX-58 (September 4, 2003), the Commission approved a request by LACMTA to permit the silencing of bells after crossing gate arms have been lowered at five at-grade Gold Line crossings in South Pasadena. Therefore, only three at-grade crossings remain at issue in PAMRC's request to limit the sounding of bells; all crossings remain at issue in PAMRC's request to eliminate the sounding of bells.

The scope of A.03-07-050 is more contested. The City's application requests that the Commission "approve the limitation of train speeds while crossing any street or intersection with the City of South Pasadena as detailed in Ordinance Number 2121." The ordinance, however, also includes sections purporting to prescribe crossing protection and to limit the conditions under which railroad whistles, horns, or other audible warning devices are used in the City. The ordinance further provides that it will take effect upon approval by the Commission. Although the City expressly asks only for approval of the speed limit in Ordinance 2121, the text of the ordinance suggests that wider approval is wanted. The legal issue of the contours of the Commission's authority under section 7658 and how that authority should be exercised with respect to Ordinance 2121 must be resolved, and will be the subject of briefing. The evidence that PAMRC and the City must introduce to support the consolidated applications would not, however, be significantly, if at all, affected by the resolution of this legal question, because the other two applications cover much of the same factual ground. Thus, resolution of questions of interpretation of section 7658 is not required prior to the EH.

Factual issues

At this time, the following factual issues are in dispute:

- Is the noise from the Gold Line as currently operated in South Pasadena so excessive as to justify an exemption to GO 143-B to silence horns at the at-grade crossings in the City;
- Would the crossings at issue would be safe without the sounding of train horns;
- Would the at-grade crossings in South Pasadena be safe without any bells sounding on the crossing gate arms;
- Would the at-grade crossings in South Pasadena not included in Res. SX-58 be safe if the bells on the crossing gate arms were silenced after the gates had descended;
- Would imposition of a speed limit of 20 mph on Gold Line trains approaching and leaving at-grade crossings in South Pasadena make it safe for the trains not to sound their horns at the crossings;
- Would imposition of a speed limit of 20 mph on Gold Line trains approaching and leaving at-grade crossings in South Pasadena make it safe for the bells on the crossing gate arms not to sound at the crossings;
- Would imposition of a speed limit of 20 mph on Gold Line trains approaching and leaving at-grade crossings in South Pasadena make it safe for the bells on the crossing gate arms at crossings not included in SX-58 to be silenced after the gates had descended at the crossings.

Legal issues

At this time, the following legal issues are in dispute:

- Whether the Commission's authority under section 7658 extends to approval of the City's Ordinance 2121, in whole or in part;
- Whether the Commission's authority under section 7658 extends only to approval of section 4 of the City's Ordinance 2121, relating to speed of trains;

- What standards the Commission should apply in evaluating the City's request for approval of Ordinance 2121.

Revised Schedule for Consolidated Proceedings

During the scheduling conference held by telephone on September 22, 2003, the parties agreed that the schedule previously set for A.03-01-013 could, with some modifications, accommodate the consolidated proceedings without need for moving the date of the EH. Because PAMRC had filed its opening testimony in A.03-01-013 prior to the scheduling conference, the parties agreed that PAMRC could supplement this testimony with any additional testimony related to the subsequent applications, and that LACMTA would then be allowed to file a motion to strike. The revised consolidated schedule is:

Ongoing	Informal exchange of information
September 5, 2003	Testimony of PAMRC and City of South Pasadena distributed to parties and ALJ
September 29, 2003	Additional testimony of PAMRC and City re: A.03-07-049 and A.03-07-050, corrected testimony for A.03-01-013 distributed to parties and ALJ
October 10, 2003	Motions, if any, directed to the testimony filed and served
October 17, 2003	Opposition to motions directed to the testimony filed and served
November 7, 2003	Testimony of LACMTA distributed to parties and ALJ
November 21, 2003	Motions, if any, directed to the testimony filed and served
December 2, 2003	Opposition to motions directed to the testimony filed and served

January 9, 2004	Rebuttal testimony of PAMRC and City distributed to parties and ALJ
January 16, 2004	Motions, if any, directed to the rebuttal testimony filed and served
January 22, 2004	Rebuttal testimony of LACMTA distributed to parties and ALJ
January 26 – 30, 2004 9:30 a.m.	EH, Commission Courtroom, San Francisco

This revised schedule is in keeping with the goal of closing all three cases within the 18-month period for resolution of ratesetting proceedings. The presiding officer may, for good cause shown, alter this schedule within the 18-month timeframe.

Parties are reminded that written testimony is to be distributed to the parties and the Administrative Law Judge, but not filed with the Docket Office.

Category of Proceeding

This ruling confirms A.03-07-049 and A.03-07-050 as ratesetting, as preliminarily determined by the Commission.

Assignment of Presiding Officer

ALJ Anne Simon will be the presiding officer for all three proceedings.

Ex Parte Rules

Ex parte communications are restricted as set forth in Rule 7.

IT IS RULED that:

1. The proceedings in A.03-01-013, A.03-07-049, and A.03-07-050 are consolidated.
2. The scope of the consolidated proceeding is as set forth herein.
3. The schedule for the consolidated proceeding is as set forth herein.
4. The presiding officer will be Administrative Law Judge Simon.

5. This ruling confirms that these proceedings are ratesetting matters.

6. Ex parte communications are restricted as set forth in Rule 7 of the Commission's Rules of Practice and Procedure.

Dated October 20, 2003, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Revised Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated October 20, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN,
for ELIZABETH LEWIS

Helen Friedman, for
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.